

### **REMARKS**

Claims 1-29 are all the claims pending in the application, claims 18-22 and 24-28 having been withdrawn from consideration responsive to an election of species requirement. Claims 1, 17, 18, 23, 24, and 29 are the only independent claims. Supporting for the foregoing amendments may be found in, for example, FIG. 5 and paragraphs [0056]-[0058] and [0099]-[0101] of the patent publication of the present application.

Although independent claims 1, 17, 23, and 29 have been amended, Applicants are not conceding in this application that these claims in their original form are not patentable over the cited references. Rather, as stated above, these cancellations are being made to facilitate expeditious issuance of allowable subject matter. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Specifically, Applicants reserve the right to pursue the subject matter of claims 1, 17, 23 and 29 in their original scope, as well as other subject matter within the application, in one or more continuing application. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Applicants have read and appreciate Examiner Anderson's office action. Applicants greatly appreciate Examiner Anderson's willingness to work with us to our mutual goal – a valid patent. By way of this amendment, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

### **Claim Rejections - 35 U.S.C. § 101**

Claims 1-16 and 23 stand rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Applicants reviewed the Office Action and respectfully traverse.

The Examiner asserts that “[b]ased on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class (such as a particular apparatus) . . . or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.” U.S.P.T.O. Office Action, App. No. 11/624,152, 2-3 (Jan. 2009) (emphasis added). In support, the Examiner cites *Diamond v. Diehr*, 450 U.S. 175 (1972); *Parker v. Flook*, 437 U.S. 584 (1978); *Gottschalk v. Benson*, 409 U.S. 63 (1972).

Applicants first respectfully assert that amended claims 1 and 23 are tied to a particular machine. Specifically, amended claims 1 and 23 recite “displaying the meeting location on a screen.” Applicants argue that a screen is a particular machine, and displaying the meeting location on a screen is a sufficient tie under § 101 as interpreted by *Bilski*. Therefore, Applicant respectfully asserts that amended claims 1 and 23 are drawn to patentable subject matter and accordingly request that the corresponding rejections be withdrawn.

Additionally, Applicants also assert that the claim language transforms the underlying subject matter to a different state or thing. Specifically, Applicants’ claim 1 recites, in part “wherein the media player includes one or more sensors configured to allow the user to interact with the media player . . . forming at least an indication of the user’s level of attention to the portion of the item of content based on the analysis of the received information on the location of each of the plurality of participants.”

Selecting a meeting place is transforming an article into a different state. A state is defined as “the condition of a person or thing, as with respect to circumstances or attributes.” (State Definition, Dictionary.com, available at: <http://dictionary.reference.com/browse/state> (last visited Apr. 15, 2009)) When the meeting place is selected, the location’s attributes are changed from a generic location to a meeting place. That changing of attributes or circumstances is, by definition, a change in state. The process transformed the location’s attributes from a generic location into a meeting place, which is a different state than the location before the selection. Thus, Applicants respectfully assert that the rejections to claims 1 and 23 be withdrawn because they are directed towards statutory subject matter.

Accordingly, Applicants assert that at least claims 1 and 23 are allowable processes within the interpreted definition of patentable subject matter under § 101 and request that the corresponding claim rejections be withdrawn. Additionally, claims 2-16 are dependent on allowable claim 1. By virtue of their respective dependencies on an allowable claim, Applicants also assert that claims 2-16 are allowable and respectfully requests that the corresponding rejections be withdrawn.

**Claim Rejections - 35 U.S.C. §102**

Claims 1, 9, 10, 15-17, and 29 stand rejected under 35 U.S.C. § 102(e), as being anticipated by U.S. Patent No. 2004/0203901 (Wilson et al.). Applicants respectfully traverse this rejection.

Applicants have amended the above independent claims to recite additional features that the Examiner has not previously considered. Specifically, Applicants' claim 1 now recites, in part:

detecting a plurality of participants;

detecting a location of each of the plurality of participants;

detecting a plurality of amenities preferences from the  
plurality of participants;

identifying a plurality of possible meeting locations based on  
a parameter; and

selecting a meeting location from the plurality of possible  
meeting locations based on the location and the amenities  
preferences of each of the plurality of participants; and

displaying the meeting location on a screen.

Applicants' independent claims 17 and 29 contain similar language.

Applicants argue that these new features are not found in the cited prior references. Additionally, the newly amended features were not considered in the last office action, making the Examiner's previous response is moot. Accordingly, Applicants assert that

claims 1, 17, and 29 are allowable over the prior art because the prior art fails to teach or suggest the claimed features. Therefore, Applicants request that the rejections for claims 1, 17, and 29 be withdrawn.

Claims 9, 10, 15 and 16 also stand rejection under § 102. Claims 9, 10, 15, and 16 depend upon independent claim 1. Because independent claim 1 is allowable, Applicants assert that claims 9, 10, 15, and 16 are allowable based upon their respective dependencies. Therefore, Applicants respectfully request that the rejections to claims 9, 10, 15, and 16 be withdrawn.

### **Claim Rejections - 35 U.S.C. §103**

Claims 11-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of U.S. Patent No. 6,324,476 (Trovato). Claims 2-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of U.S. Patent No. 7,139,722 (Perrella et. al). Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Perrella and in further view of U.S. Patent No. 6,937,853 (Hall). Claims 7, 8, and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Perrella and as applied to claim 2, in further view of U.S. Patent No. 7,181,410 (Jones et al.).

Applicants respectfully submit that the above rejections are moot in view of the new amendments. Applicants have amended independent claim 23 to recite additional features that the Examiner has not previously considered. Specifically, Applicants' claim 23 now recites, in part:

- detecting a plurality of participants;
  - searching for a mode of transportation for each of the plurality of participants;
  - detecting a location for each of the plurality of participants;
  - detecting a speed of movement for each of the plurality of participants; detecting an amenities preference for each of a plurality of participants;
  - confirming the mode of transportation based on the speed of movement; and
  - selecting a meeting location based on the location, amenities preferences, and mode of transportation for each of the plurality of participants.

Applicants' independent claim 1 contains similar language.

Applicants assert that the above references, alone or in combination, fail to teach, suggest, or make obvious Applicants' new claimed features. Therefore, Applicants assert that independent claim 23 is allowable and respectfully requests that the rejection be withdrawn.

Additionally, Applicants assert that the above dependent claims 2-8 and 11-14 depend on patentable independent claims. By virtue of their respective dependencies on allowable independent claims, as previously discussed, Applicants argue that the claims should be allowed and accordingly request that the rejection be withdrawn.

**CONCLUSION**

In view of the above, Applicants submit that the currently pending claims are in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned so that such issues may be resolved as expeditiously as possible.

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Respectfully submitted,

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